IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

SECOND APPEAL NO. 493 OF 2004

Sharad Dhondiram Ambekar & Ors. ... Appellants.

Versus

Shabaskhan Suleman Mulla & Ors..... Respondents.

Mr. M. V. Limaye for the Appellants.
Mr. A. B. Borkar for Respondent Nos.1 to 5.

CORAM : ANOOP V. MOHTA, J.

DATED : 25TH NOVEMBER, 2005.

P.C.:

Heard.

2. The appellate court by the impugned judgment reversed the judgment and decree of injunction whereby the defendants were permanently restrained from causing obstruction and interference in the peaceful possession of the plaintiffs over the suit property. The case of the plaintiffs is based on the foundation of property being ancestral property and they are in

possession of the property in trust.

3. The appellate court on assessment of the material placed on record as well as documents comes to a clear finding that the Plaintiffs failed to prove their exclusive peaceful possession and/or possession of the property in trust. The appellants / plaintiffs also failed to prove the correct description of the property as objected and pointed out by the respondents / defendants. It is clear that a person or a party in possession based on ancestral property ought to have placed on record the documents and material to substantial his case of possession. Inspite of the opportunity available, the appellate court has rightly observed, the appellants / plaintiffs failed to prove correct description of the property.

4. Without deciding question of title of property in question, what is required in a suit for injunction against the defendants is exclusive possession of the property in question. There is no doubt the burden lies on the plaintiffs to prove lawful possession of the suit property with detailed and clear description. In the absence of the said clear pleadings and

description, I see there is no reason to interfere with the findings arrived at by the appellate court.

5. The appellate court, therefore, right in reversing the findings given by the trial court and reversing the decree for possession and other directions against the defendants. There is no substantial question of law as such raised in this second appeal. It is needless to say that there is no perversity as such pointed out or borne out from the record. The impugned judgment and order is within the framework of law and record and need no interference. Second Appeal is, accordingly, dismissed.

Sd/-

(ANOOP V. MOHTA,J.)